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MAILED

MAR 01 2011

OFFICE OF PETITIONS

In re Patent No. 7,837,223 :
Shilliday et al. : DECISION ON REQUEST FOR
Issue Date: November 23, 2010 : RECONSIDERATION OF
Application No. 10/589,778 : PATENT TERM ADJUSTMENT
Filed: April 25, 2008 : AND NOTICE OF INTENT
Attorney Docket No. : TO ISSUE CERTIFICATE OF
53982/333698 : CORRECTION
Title: INFLATABLE CUSHIONING :
DEVICE :
:

This is a decision on the petition filed on December 29, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred twenty-one (621) days.

The request for review of the patent term adjustment is GRANTED to the extent indicated.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by five hundred sixteen (516) days is GRANTED.

The period of adjustment to which the patent is entitled under 37 CFR 1.702(a) is 88 days.

The period of adjustment to which the patent is entitled under 37 CFR 1.702(b) is 459 days.

The period of adjustment under 37 CFR 1.702(a) and the period of adjustment under 37 CFR 1.702(b) overlaps for 31 days (August 22, 2009 to September 21, 2009).

Patentees also contend that an additional adjustment of 106 days is warranted based upon the Office's failure to respond within four months to applicants December 11, 2009 reply.

Patentees' argument has been considered but not deemed persuasive. 37 CFR 1.702(a)(2) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

The mailing of the Office action on March 17, 2010, met the requirements of 37 CFR §1.702(a)(2). The subsequent mailing of the supplemental non-final Office action July 27, 2010 does not negate the fact that the Office took action in this application within the meaning of § 1.702(a)(2) on March 17, 2010. Unless vacated by the Technology Center Director, for purposes of calculating patent term adjustment, the action originally mailed by the examiner on March 17, 2010 will be used to calculate the amount of Office delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificate of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating

that the term of the above-identified patent is extended or adjusted by **five hundred sixteen (516) days.**

The \$200.00 petition fee set forth in 37 CFR 1.18(e) has been assessed. No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3215.

Charlema Grant

Charlema Grant
Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,837,223 B2

DATED : November 23, 2010

DRAFT

INVENTOR(S) : Shilliday et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 187 days

Delete the phrase "by 187 days" and insert -- by 516 days--